

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF SIXTH &
BATTERY CORP.,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 414

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 13th day of November, 1973, at Seattle, Washington; and appellant Sixth & Battery Corp. appearing through its vice president, Harold I. Poll and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Walt Woodward; and the Board having considered the exhibits, reviewed

1 the transcript, records and files herein and having entered on the
2 18th day of December, 1973, its proposed Findings of Fact, Conclusions
3 of Law and Order; and the Board having served said proposed Findings,
4 Conclusions and Order upon all parties herein by certified mail, return
5 receipt requested and twenty days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 18th day of
11 December, 1973, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington this 25th day of January, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16
17 Walt Woodward
18 WALT WOODWARD, Chairman

19 W. A. Gissberg
20 W. A. GISSBERG, Member

21 Mary Ellen McCaffree
22 MARY ELLEN McCAFFREE, Member

CERTIFICATION OF MAILING

I, LaRene C. Barlin, certify that I mailed copies of the foregoing document on the 25th day of January, 1974 to each of the following parties:

Mr. Keith D. McGoffin
Burkey, Marsico, Rovai
& McGoffin
818 South Yakima Avenue
Tacoma, Washington 98405

Mr. Harold I. Poll
Vice President
Sixth & Battery Corporation
801 White-Henry-Stuart Building
Seattle, Washington 98101

Puget Sound Air Pollution
Control Agency
410 West Harrison Street
Seattle, Washington 98119

the foregoing being the last known post office addresses of the above-named parties. I further certify that proper postage had been affixed to the envelopes deposited in the U.S. mail.


LARENE C. BARLIN
POLLUTION CONTROL HEARINGS BOARD

1 BEFORE THE
2 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

3 IN THE MATTER OF SIXTH &)
4 BATTERY CORP.,)
 Appellant,)
5)
6 vs.)
)
7 PUGET SOUND AIR POLLUTION)
8 CONTROL AGENCY,)
 Respondent.)
9

PCHB No. 414

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

10 This matter, the appeal of a \$50.00 civil penalty for an alleged
11 smoke emission violation of respondent's Regulation I, came before
12 the Pollution Control Hearings Board (Walt Woodward, presiding officer)
13 in a formal hearing in Washington Commerce Building, Seattle, Washington,
14 at 9:30 a.m., November 13, 1973.

15 Appellant was represented by Harold I. Poll, its vice president.
16 Respondent appeared through Keith D. McGoffin. Ernest Yamaguchi,
17 Seattle court reporter, recorded the proceedings.

18 Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard, exhibits examined and transcript reviewed,
2 the Pollution Control Hearings Board makes these

3 FINDINGS OF FACTS

4 I.

5 From the boiler stack of the Sixth and Battery Building, 2346-6th
6 Avenue, Seattle, King County, a two-story structure owned by appellant,
7 there was emitted black smoke of shade equivalent to No. 5 on the
8 Ringelmann Scale for eight consecutive minutes at about 11:00 a.m.,
9 June 6, 1973.

10 II.

11 This emission, noted by an inspector on respondent's staff,
12 resulted in respondent's Notice of Violation No. 6796, citing a
13 violation of Section 9.03 of respondent's Regulation I, being served
14 by mail on appellant. Subsequently, and in connection therewith,
15 respondent also caused Notice of Civil Penalty No. 959, in the sum
16 of \$50.00, to be served on appellant. That penalty is the subject of
17 this appeal.

18 III.

19 Section 9.03 of respondent's Regulation I makes it unlawful
20 "to cause or allow" the emission of an air contaminant for more than
21 three consecutive minutes in any one-hour period of a shade darker than
22 No. 2 on the Ringelmann Scale. Section 3.29 of respondent's Regulation I
23 authorizes respondent to levy a civil penalty of not more than \$250.00
24 for any violation of Regulation I.

25 IV.

26 Appellant did not deliberately "cause" the emission and took
27 prompt action to correct the mechanical breakdown which resulted in

1 the emission.

2 V.

3 Appellant was cited in Notice of Violation No. 2126 for a
4 similar violation from the same boiler stack on January 8, 1970.

5 From these findings, the Pollution Control Hearings Board
6 comes to these

7 CONCLUSIONS OF LAW

8 I.

9 Appellant was in violation of Section 9.03 of respondent's
10 Regulation I on June 6, 1973, as cited in Notice of Violation No. 6796.
11 The violation was not deliberate but in the legal meaning of "cause"
12 in Section 9.03 there was a violation.

13 II.

14 Notice of Civil Penalty No. 959, in view of being for a second
15 violation and being one-fifth of the maximum allowable amount, is
16 both lenient and reasonable.

17 Therefore, the Pollution Control Hearings Board issues this

18 ORDER

19 The appeal is denied and Notice of Civil Penalty No. 959 is
20 sustained in the amount of \$50.00.

21 DONE at Lacey, Washington, this 18th day of December, 1973.

22 POLLUTION CONTROL HEARINGS BOARD

23 Walt Woodward
24 WALT WOODWARD, Chairman

25 W. A. Gissberg
26 W. A. GISSBERG, Member

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

3 Mary Ellen McCaffree
MARY ELLEN MCCAFFREE, Member